THE HON'BLE MS JUSTICE G. ROHINI

W.P.No.17886 of 2006

Dated: 30-08-2006

Between:

M/s. Milendra Transport Corporation, rep. by its Proprietor Mr. Rajendra Prasad Mishra.

..Petitioner

and

The Prohibition & Excise Depot, Government of A.P., rep. by its Superintendent, Ananthapur and another.

..Respondents.

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W.P.No.17886 of 2006

ORDER:

The petitioner claims to be the owner of lorry bearing No.AP 28 V 8410, which was seized by the respondents on 08-08-2006 on the allegation that the vehicle was involved in an offence under the Andhra Pradesh Excise Act, 1968 (for short 'the Act'). Aggrieved by the said action of the respondents, this writ petition is filed. The petitioner also seeks a consequential direction to release the vehicle in question.

2. I have heard the learned counsel for the petitioner and the learned Government Pleader appearing for the respondents.

3. Under Section 46 of the Act, where anything liable for confiscation under Section 45 of the Act is seized or detained, the Officer seizing and detaining such property shall, without any unreasonable delay, produce the same before the Deputy Commissioner for Prohibition and Excise, who has jurisdiction over the area and thereafter, the necessary enquiry will be conducted and in case, the Deputy Commissioner for Prohibition and Excise is satisfied that an offence has been committed, he may order confiscation of the property seized. In the case on hand, such enquiry is pending before the Deputy Commissioner for Prohibition and Excise. If the petitioner desires of taking the

interim custody of the vehicle, he ought to have made an appropriate application before the Deputy Commissioner for Prohibition and Excise, in which event, appropriate orders would have been passed. Without taking any such steps, the petitioner cannot straight away file this writ petition under Article 226 of the Constitution of India. Hence, the writ of mandamus as prayed for cannot be granted.

Accordingly, granting leave and liberty to the petitioner to take appropriate remedy as available under law the Writ Petition is dismissed. No costs.

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G. ROHINI, J

Dated: 30-08-2006

Note:
Issue CC by two days

(Bo)

sj